

HOUSE No. 4379

The Commonwealth of Massachusetts

By Ms. Khan of Newton, for the committee on Children, Families and Persons with Disabilities, on House, No. 143, a Bill prohibiting the sale, installation and disposal of mercury thermostats (House, No. 4379). November 30, 2009.

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AN ACT RELATIVE TO THE AUTHORITY OF THE DISABLED PERSONS PROTECTION
COMMISSION PURSUANT TO CHAPTER 19C.

FOR THE COMMITTEE:

NAME:

Kay Khan

DISTRICT/ADDRESS:

11th Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO THE AUTHORITY OF THE DISABLED PERSONS PROTECTION COMMISSION PURSUANT TO CHAPTER 19C.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority
of the same, as follows:*

SECTION 1. Section 1 of chapter 19C of the General Laws, as appearing in the 2008

Official Edition, is hereby amended as follows:-

By striking out the first paragraph as so appearing on lines 1 and 2, and inserting in place thereof
the following words: -

For the sole purposes of this chapter, the following words shall, unless the context
requires otherwise, have the following meanings:-

Said Section 1 is further amended by striking out the words “disabled person’s” in lines 9-10 and
inserting in place thereof the words:-

person with a disability

Said Section 1 is further amended by striking out the words “disabled person” on lines 11 and 15
and inserting in place thereof the words:-

person with a disability

Said Section 1 is further amended by striking out the words “chapter one hundred and twenty-
three” on lines 16-17, and inserting in place thereof the following:-

Chapter 123B –

Said Section 1 is further amended by striking out the definition of "General Counsel" or
"counsel" on lines 20-21.

18 Said Section 1 is further amended by striking out the words “disabled persons” on line 30 and
19 inserting in place thereof the words:-

20 persons with a disability

21 And further, by striking out the words “disabled person” on line 31 and inserting in place thereof
22 the words:-

23 persons with a disability

24 Said Section 1 is further amended by striking out the words “disabled person or persons” on lines
25 37 and 39 and inserting in place thereof the words:-

26 person(s) with a disability

27 Said Section 1 is further amended by striking out the words "including un-consented to sexual
28 activity" on line 42 and inserting in place thereof the following: -

29 . . . , including but not limited to, un-assented to sexual activity

30 Said Section 1 is further amended by striking out the words “disabled persons” as so appearing
31 on line 44 and inserting in place thereof the words:-

32 persons with a disability

33 **SECTION 2.** Section 2 of chapter 19C of the General Laws, as appearing in the 2008 Official
34 Edition, is hereby amended as follows:-

35 By striking out the words “disabled persons” in said Section and inserting in place thereof the
36 words:-

37 persons with disabilities

38 **SECTION 3.** Section 3 of chapter 19C of the General Laws, as appearing in the 2008 Official
39 Edition, is hereby amended as follows:-

40 By amending subsection (c) of said section by deleting the words “disabled persons” before the
41 words “to be known as” on line 18 and inserting in place thereof the words:-

42 persons with disabilities

43 And by amending subsection (d) of said section by deleting the word “other” after the word
44 “designate” on line 20.

45 Said Section 3 is further amended by amending subsection (f) by striking out the words “disabled
46 persons” as so appearing on lines 26-27 and inserting in place thereof the words:-

persons with disabilities

Said Section 3 is further amended by striking out subsection (h) of said Section 3 on lines 31-35 and inserting in place thereof the following:-

(h) to develop, in consultation with the secretary of the executive office of health and human services, standards for referral of investigations to the agencies within the executive office of health and human services pursuant to Section 4.

SECTION 4. Section 4 of chapter 19C of the General Laws as appearing in the 2008 Official Edition, is hereby amended as follows:-

By amending the first sentence by striking the words "disabled person," and inserting in place thereof the words:-

person with a disability

And further by inserting before the words "the commission shall" the following:-

. . . and subject to the commission's authority to conduct its own investigation

Said Section 4 is further amended by amending subsection (b) of said section by striking out the first sentence on lines 10-16 and inserting in place thereof the following:-

. . . refer immediately any such reports, which allege the occurrence of abuse to a person with a disability whose caretaker is an agency of the commonwealth, a facility licensed by an agency of the commonwealth or a private agency which provides services or treatment to persons with disabilities pursuant to a contract or agreement with an agency of the commonwealth, to an investigator of the commission or to the department within the executive office of health and human services which has jurisdiction over the disability manifested by the person with a disability.

Said Section 4 is further amended by amending subsection (c) of said section 4 by striking out the first paragraph on lines 25-33 and inserting in place thereof the following:-

(c) refer immediately any such reports, which allege the occurrence of abuse of a person with a disability whose caretaker is other than an agency of the commonwealth, a facility licensed by an agency of the commonwealth or a private agency which provides services or treatment to persons with disabilities pursuant to a contract or agreement with an agency of the commonwealth to the commission; the department of mental health in those cases where the disabled person is suffering from a mental illness, the department of developmental services where the person with a disability is a person with developmental disabilities, or to the Massachusetts rehabilitation commission where the person with a disability is otherwise physically disabled. Upon such referral, the

commission or said department shall immediately designate an investigator who shall investigate such allegation of abuse as provided in Section 5.

Said Section 4 is further amended by adding immediately after subsection (c) the following:-

(d) In every case in which an investigation is conducted pursuant to section 4(b) or section 4(c) of chapter 19C and the alleged victim is at risk of harm, the appropriate protective service agency as designated by the commission shall make reasonable efforts to alleviate the risk of further harm by providing protective services not later than the initiation of said investigation to insure the safety of the person with a disability. In conducting such investigation, the designated investigator may seek and utilize the assistance of municipal and state police officer. If during said investigation,. Access to the disabled person is denied to the designated investigator, an appropriate municipal or state police officer shall, upon request, accompany the designated investigator to gain access to the person with a disability.

Said Section 4 is further amended by striking out the last paragraph of subsection (c) lines 34-66 and inserting in place thereof the following:-

(e) Upon receipt of a written determination and evaluation prepared and forwarded to the commission pursuant to the provisions of section 5 or upon receipt of a report of abuse of a person with a disability where the commission, in accordance with written standards established by the commission, determines that the report may contain allegations of criminal conduct, including but not limited to (1) a person with a disability has been sexually abused or raped, or assaulted or battered as set forth in chapter 265; (2) a person with a disability has suffered brain injury, loss or substantial impairment of a bodily function or organ, or substantial disfigurement; or (3) a person with a disability has suffered a serious bodily injury as a result of a pattern of repetitive actions or inactions by a caretaker; the commission, notwithstanding any provision of chapter 66A regarding personal data to the contrary, shall immediately refer such report to the special investigative unit, established pursuant to section 3(i) of chapter 19C, which shall conduct an initial evaluation and investigation of the alleged criminal conduct. Upon completion of such evaluation and investigation, said special investigative unit shall report the results of such evaluation and investigation to the commissioners who, notwithstanding any provision of chapter 66A regarding personal data to the contrary, shall, if the special investigative unit has determined that there is reason to believe that a criminal offense has been committed, immediately refer such report, together with any relevant information obtained in such initial investigation, to the attorney general or district attorney for the county wherein the alleged criminal offense occurred. Upon receipt of such report, the attorney general or district attorney for the county wherein the alleged criminal offense occurred shall contact the commission in order to coordinate the investigation of the matters giving rise to the report. As part of such coordination, the

attorney general or the district attorney may request that the commission delay or defer the investigation of the non-criminal matters giving rise to the report; provided, however, that such request shall be granted only where the commission determines that the health and the safety of the alleged victim of abuse shall not be adversely affected thereby and that the commission's or department's ability to conduct a later investigation shall not be unreasonably impaired by such delay or deferral. In all cases including, but not limited to, those in which the commission agrees to delay or defer the non-criminal investigation, the attorney general or district attorney shall keep the commission informed of the status of the criminal investigation and the commission shall provide to the attorney general or the district attorney any and all information that may be relevant to the criminal investigation. In cases in which the commission agrees to delay or defer the non-criminal investigation, it shall monitor the progress of the criminal investigation and shall determine, after consultation with the appropriate law enforcement agencies, when or whether the non-criminal investigation should be initiated or resumed. No person providing notification or information to the commission, the commission's special investigative unit, the district attorney, or attorney general or providing testimony in court in furtherance of the provisions of this section shall be liable in any civil or criminal action by reason of such action.

SECTION 5. Section 5 of chapter 19C of the General Laws as appearing in the 2008 Official Edition, is hereby amended as follows:-

The first sentence as so appearing on lines 1-4 shall be amended by deleting the words "disabled person" and inserting in place thereof the words:-

person with a disability

And further, by deleting the words "the general counsel," and "executive office of human services" and inserting in place thereof the words:-

"executive office of health and human services"

Subsection (1) of said Section 5 is hereby amended by striking out on lines 7-8 the words "counsel or department of mental health or the department of public health" and inserting in place thereof the words: -

the department of mental health, the department of developmental services or the massachusetts rehabilitation commission

Subsection(1) of said Section 5 is hereby further amended by striking out the words "disabled person's" on line 11 and inserting place thereof the words:-

person with a disability's

152 And further by striking out the words “disabled person” on line 12 and inserting in place thereof
153 the words:-

154 person with a disability

155 Said subsection (1) of said Section 5 is hereby further amended by striking out on lines 16-18 the
156 words "to the general counsel and to the department of mental health and the department of
157 public health" and inserting in place thereof the words:-

158 and to the department of mental health, the department of developmental services or the
159 massachusetts rehabilitation commission, as appropriate

160 Subsection (3) of said Section 5 is hereby amended by striking out the words "the general
161 counsel, the department of mental health and the department of public health" on lines 42-43 and
162 inserting in place thereof the words:-

163 and the department of mental health, the department of developmental services or the
164 massachusetts rehabilitation commission, as appropriate

165 Subsection (4) of said Section 5 is hereby amended by striking out the words “a disabled person”
166 on line 46 and inserting in place thereof the words:-

167 a person with a disability

168 Subsection (5) of said Section 5 is hereby amended by deleting the second and third paragraphs
169 on lines 59-77.

170 **SECTION 6.** Section 6 of Chapter 19C of the General Laws as appearing in the 2008 Official
171 Edition, is hereby amended by striking out the first paragraph on lines 1-9 and inserting in place
172 thereof the following:-

173 Acting through state agencies within the executive office of health and human services
174 designated by the commission for the purpose of providing protective services as
175 necessary to prevent further abuse in cases investigated pursuant to this chapter and
176 subject to the oversight of the commission, the commission shall:

177 Section 6 of Chapter 19C, subsection (1) and subsection (3) are hereby amended by striking out
178 the words “a disabled person” and inserting in place thereof the words:-

179 a person with a disability

180 **SECTION 7.** Section 7 of Chapter 19C of the General Laws as appearing in the 2008 Official
181 Edition, is hereby amended as follows:-

182 Subsection (a) of said Section 7 is hereby amended by striking out the words "the general
183 counsel, department of mental health or the department of public health" on lines 1-2, and
184 inserting in place thereof the words:-

185 the department of mental health, the department developmental services or the
186 massachusetts rehabilitation commission

187 Subsection (a) of Section 7 is further amended by striking out the words "disabled person" on
188 lines 3,6,11,12,15,17,19,21,and 27 and inserting in place thereof the words:-

189 person with a disability

190 Subsection (a) of said Section 7 is hereby further amended by deleting the word "counsel" on
191 lines 5 and 8.

192 Subsection (b) of said Section 7 is hereby amended by deleting the words "counsel or" line 31
193 and on line 35.

194 Subsection (b) of said Section 7 is hereby further amended by striking out the phrase ". . .the
195 court may order the provision of protective services on an emergency basis. . ." on lines 46-47
196 and inserting in its stead the following words:-

197 and no other person who is authorized to consent is available or willing to consent, the
198 court may order protective services on an emergency basis and the court in ordering the
199 provision of protective services on an emergency basis may appoint a conservator,
200 guardian or other person authorized to consent to the provision of protective services;
201 provided however, that the court shall establish the least restrictive fiduciary
202 representation that will satisfy addressing the emergency and needs of such person with a
203 disability.

204 Subsection (b) of said Section 7 is hereby further amended by striking out the words "Said order
205 may be extended for an additional seventy-two hour period if the court finds that such extension
206 is necessary to remove the emergency" on lines 51-53 and inserting in its stead the following:-

207 Said order may be extended for an additional period of time if the court finds that such
208 extension is necessary to remove the emergency or to address the needs of such person
209 with a disability

210 Subsection (c) of said Section 7 is hereby amended by striking out the words "disabled person"
211 on lines 56-57 and inserting in place thereof the words:-

212 person with a disability

213 Subsection (c) of said Section 7 is hereby amended by deleting on line 58 the word "counsel."

214 Subsection (d) of said Section 7 is hereby amended by striking out the words “disabled person”
215 on lines 62,64, and 65 and inserting in place thereof the words:-

216 person with a disability

217 **SECTION 8.** Section 8 of chapter 19C of the General Laws as appearing in the 2008 Official
218 Edition, is hereby amended by striking out the words "disabled person" on line 2 and inserting in
219 place thereof the following:-

220 person with a disability

221 And further by striking out the words “disabled persons” on line 5 and inserting in place thereof
222 the following:-

223 persons with disabilities.

224 Section 8 is further amended by striking out the words “...whose caretaker is a state
225 agency" on lines 2 and 5-6, and inserting in place thereof the words:-

226 . . . whose caretaker is an agency of the commonwealth, a facility licensed by an agency
227 of the commonwealth or a private agency which provides services or treatment to persons
228 with disabilities pursuant to a contract or agreement with an agency of the
229 commonwealth

230 **SECTION 9.** Section 9 of chapter 19C, as appearing in the 2008 Official Edition, is hereby
231 amended by striking out lines 1-2 and inserting in place thereof the words:-

232 Upon completion of any investigation conducted pursuant to this chapter, including but
233 not limited to a formal investigation conducted pursuant to section 8, and notwithstanding
234 any provision of chapter 66A regarding personal data to the contrary, the commission
235 shall:

236 Section 9 of said chapter 19C is hereby further amended by adding the following subsection after
237 subsection (d):-

238 (e) refer any matters for which there is reason to believe that professional misconduct has
239 occurred to the agency of the commonwealth having jurisdiction over such professional

240 conduct for possible imposition of disciplinary measures in accordance with the
241 requirements of any applicable law or regulation.

242 **SECTION 10.** Section 10 of chapter 19C, as appearing in the 2008 Official Edition, is hereby
243 amended by striking out the words “disabled person” on lines 6-7 and 12 and inserting in place
244 thereof the following:-

245 person with a disability

246 **SECTION 11.** Section 11 of chapter 19C as appearing in the 2008 Official Edition, is hereby
247 amended by striking out the words “general counsel” as appearing on lines 5-6.

248 Section 11 of Chapter 19C is further amended by striking out the words “disabled person” on
249 line 9 and inserting in place thereof the following:-

250 person with a disability

251 **SECTION 12.** Section 13 of chapter 19C as appearing in the 2008 Official Edition is hereby
252 amended by striking out the words “disabled person” from the title and inserting in place thereof
253 the words:-

254 a person with a disability

255 Section 13 is further hereby amended by striking out on lines 1-3 the following words “any
256 disabled person whose caretaker was a state agency or an agency of any subdivision of the
257 commonwealth or a private agency contracting with the commonwealth” and inserting in place
258 thereof the following:-

259 any person with a disability whose caretaker is an agency of the commonwealth, a
260 subdivision of the commonwealth, a facility licensed by an agency of the commonwealth
261 or a private agency which provides services or treatment to a person with disabilities
262 pursuant to a contract or agreement with an agency or the commonwealth